IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 548 OF 2005

WITH

CIVIL APPLICATION NO. 1175 OF 2005

Ashok Khanderao Sorate ..Appellant

versus

Raju S. Landge & Ors. ..Respondents

Mr. C. R. Dalvi with K. Y. Mandlik for the Appellant.

Mr. V. S. Gokhale for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 12TH SEPTEMBER,2005

ORAL ORDER :

1. Heard learned counsel for the appellant and the respondents.

2. Looking to the issue involved, the appeal is taken up for the final hearing. The only contention that was raised by the appellant was that his suit was not maintainable before the court, the trial court should have instead of dismissing the suit passed an order under Order VII Rule 10 and 10A of the C.P.C. i.e. order for returning the plaint for presentation to the proper court and also should have followed Rule 10A.

3. The impugned judgment clearly shows that the suit was dismissed for want of jurisdiction though the court has observed that the suit should have been filed in the Civil Court of Original Jurisdiction i.e. before the District Judge, Pune. In view of this legal lacuna, the impugned order is set aside. Plaint to be returned to the plaintiff for presentation before the District Judge, Pune. It should be presented within four weeks from today and in any case on or before 11.10.2005. Thereafter the court may give notice to the respondents for appearance. The appellant will be at liberty to apply for ad interim reliefs. If he so applies for ad interim reliefs, he will give 48 hours previous notice in writing to the other side.

4. In view of the above Appeal and Civil Application stands dismissed. Ad interim order not to continue.

5. Certified copy expedited.

12.9.2005 (D.G. DESHPANDE, J.)

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